BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

IN RE: E. P.

[redacted] and [redacted],
Petitioners,

NO.: 02-36

vs.

WILLIAMSON COUNTY SCHOOL SYSTEM,
Respondent.

ORDER

This case came before the Tennesseec Department of Education upon a Petition, filed by Mark Petro and Robin Petro, the parents of E. P., a 15 year old, who has the diagnosis of "Intellectually gifted", as defined by the *Tennessee Rules, Regulations and Minimum Standards and the Administrative Policies and Procedures Manual of the Division of Special Education of the State Board of Education* ("APPM"), Rule 0520-1-9-01. The Petition was heard upon Petitioners' assertion that the School System's placement of E. P. was inappropriate and:

"1. That E has been denied entry or continuance in a program of special education appropriate to her needs;

2. That she has been proposed to be placed in a program of special education which is inappropriate to her condition and needs; and

3. Is proposed to be provided with special education or other education which is insufficient in quantity to satisfy the requirements of the law."

Petitioners' Letter, dated 6/13/02, requesting a due process hearing and pursuant to TCA §§ 4-5-101 et seq. and 49-10-601 . The School System denied these assertions. The Administrative Law

Judge decided to hear this case on the issue of least restrictive environment, upon the parents' assertion that the school placement could not implement E. P.'s Individual Education Plan (IEP) at the Ravenwood location.

A hearing was conducted on Friday, July 19, 2002 at the Williamson County Board of Education offices in Franklin, TN by Barbara A. Deere, Administrative Law Judge. Petitioners represented themselves and their daughter, E. P. and John D. Kitch, Attorney, represented the School System. In addition to the Petitioners, testimony was given by E. P.; Marlies Luchsinger, a gifted consultant and teacher at E. P.'s school; and Dr. Pam Vaden, Principal of E. P.'s school.

FINDINGS OF THE COURT

E. P. is a 15 year old student presently zoned for a new school in the Williamson County, TN School System. She has been diagnosed as "intellectually gifted" by the School System and both parents and herself have attended past M Team meetings and participated in the development of IEP's. E. P. attended Brentwood High School during the school year 2001-2002 and will begin the 2002-2003 school year at the newly-opened Ravenwood High School. The new school will have two grades the first year, freshmen and sophomores; in the following two years a new grade will form from the previous years top grade; ie. this year's sophomores will be next year's juniors and the next year's seniors.

E. P.'s testimony revealed that changes in the school include: things she couldn't do she wanted to do, such as having to taking a statistics class by video conferencing; the classes are different; there are a fewer number of teachers and students; Ravenwood has only two classes (freshmen and sophomores) and Brentwood has all four classes; and that extra curricular activities are not as competitive.

She also testified that she made good grades in the eighth and ninth grades, (GPA of 3.8);

the other students in her class are the same age as she is; there are fewer teachers and students because there are fewer grades; she knew that she would be going to Ravenwood in the fall of 2001, yet she and her parents agreed to two IEP's developed between the time they learned of the rezoning and the request for this due process hearing (Exhibits 10, 11, 14); there is a teacher in the video conferenced statistics class; she could take the statistics class the next year (may be a full class of students); she was, in fact, taking an Algebra II class through the University of Alabama, by correspondence-she has no teacher, but a tutor; she has contact outside school with older peers; and that she thought she had a right to go to Brentwood High School to participate in competitive extra curricular activities (color guard) because she is gifted. She understood that if she were zoned for a smaller school, it might not have all the offerings of Brentwood.

E. P. agreed that her last IEP (2/20/02) stated she was a focused and mature young lady; she agreed with the goals set at the February, 2002 meeting; she knew she was going to Ravenwood in February, 2002; the only modification to her classroom was "gifted study hall"; there was no note on the IEP as to her having any social or disciplinary issues.

Testimony of the school gifted consultant, Luchsinger, a qualified expert in the subject of needs of gifted students, showed that she was familiar with E. P.; E. P. was a bright student, no disciplinary problem; the 2/02 IEP was appropriate and could be implemented at Ravenwood or Brentwood High; and that E. P.'s choice of classes fell in the area of general education curriculum as opposed to that of special education. Ms. Luchsinger was asked about the recourse for E. P. if certain classes were unavailable and her answer was that should be taken up with the school board, not the IEP team. She believed E. P. would have no trouble transitioning from the former school to the new school.

Principal Vaden testified that she was familiar with the student since January, 2002 and

had given E. P. a tour of the new school. She had attended the January, February and June, 2002 IEP meetings. Her testimony revealed that the issue of the statistics class arose in May or June, 2002. She knew of incidents where Brentwood, in the past, had been unable to offer certain classes, and that the new school curriculum was modeled after Brentwood. Her testimony, as well as that of E. P. and M Luchsinger, was that Dr. and Mrs Petros had agreed to implementation of the IEP as formulated in February, 2002. The choice to take statistics this year, instead of next year was a general education choice. Vaden revealed that the purpose of the June, 2002 IEP was to assign the student to Brentwood High School; she also stated that the parents were given an opportunity to avoid the rezoning of this child, until May 15, 2002 and they did not take advantage of that opportunity.

Principal Vaden's testimony revealed that she had participated in developing the new school, and had the special needs population in mind. She saw the gifted students as being presented with an opportunity to become the leaders and planned to assign teachers as mentors to these students.

The last witness, [redacted] testified that she had concerns for the uncertainty of the new school. She also agreed that her daughter was well adjusted, bright, and possessed leadership skills.

CONCLUSIONS OF LAW

Both parties agree to the written definition of least restrictive environment, found at *Tennessee Rules, Regulations and Minimum Standards and the Administrative Policies and Procedures Manual of the Division of Special Education of the State Board of Education* , Rule 0520-1-9-01:

(a) To the maximum extent appropriate, children with disabilities, including children in

public or private institutions or other care facilities, are educated with children without disabilities; and

(b) Special classes, separate schooling or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in general education cannot be achieved satisfactorily.

Tennessee law also requires local school systems to provide children with "special education services sufficient to meet the needs and maximize the capabilities of handicapped children." TCA § 49-10-101(a)(1) (1972).

In making such a determination, the test for the court is whether the "the individualized educational program developed through the M team is reasonably calculated to enable the child to receive educational benefits."*Board of Educ. v. Rowley*, 458 U.S. 176, 206-07, 102 S. Ct. 3034, 3050-51, 73 L. Ed.2d 690, 712 (1982). According to *Rowley*, in order to satisfy its duty to provide a free appropriate education, "a state must provide personal instruction with sufficient support services to permit the child to benefit educationally from the instruction."*Id.* at 203, 102 S. Ct. at 3049, 73 L. Ed.2d at 710. The educational benefits do not have to maximize a child's potential, but must only offer a "basic floor of opportunity" which will allow the child to progress with his education. *Id.* at 201, 102 S. Ct. at 3048, 73 L. Ed.2d at 708.

OPINION

This is an issue of which school the child should attend and is governed by TCA § 49-6-3101 et seq. The concerns of the Petitioners that their daughter should attend one school over another school, when either school can provide an appropriate education, facilitating the goals of the team IEP, should have been raised with the local school board, pursuant to TCA § 49-6-3201 et seq. Those statutes provide for resolution of zoning and school placement issues. The Court finds no evidence that the child is not within a least restrictive environment; nor has the local

education agency failed to provide special education services sufficient to meet the needs and maximize the capabilities of E. P.

The proof was that E. P.'s placement is with children without disabilities and there was no indication by testimony or exhibits introduced that her special needs required any special assignment, other than gifted study hall and that was offered at Ravenwood. E.P.'s IEP was found to be proper and agreeable to all parties, prior to the parents and/or child's desire to change E. P.'s school. The Administrative Law Judge finds that Petitioners had other recourse for their issue and simply chose the wrong forum to try the case. There is recourse, simply not through the TN Department of Education laws and regulations for special education students. This should be a general education issue.

This case is therefore dismissed against the Petitioners.

ENTERED July 30, 2002.

Barbara G. Deere

BARBARA A. DEERE
Administrative Law Judge
State of Tennessee, Department of Education

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and exact copy of this Opinion upon Petitioners, Dr. and Mrs. [redacted] and daughter, EP via facsimile at [redacted] and upon John D. Kitch, Attorney for Williamson County School System via facsimile at 615/385-9123 this the 30th of July, 2002.

Barbara G. Deere

Barbara A. Deere